

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Applications to Assign Wireless Licenses) WT Docket No 03-203
from WorldCom, Inc (Debtor-in-Possession))
to Nextel Spectrum Acquisition Corp)

To The Commission

PETITION TO DENY

Red New York E Partnership ("Red New York E"), and Veritas LLC ("Veritas") (collectively "Petitioners") file herewith, by their attorneys, their Petition to Deny the above-captioned application to assign certain wireless licenses from WorldCom, Inc (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp. (hereinafter, the "Application")

Factual Statement

Red New York E is the licensee of MMDS Station WLR500 in New York City, operating with facilities on the Empire State Building. In 1987 it entered into a lease agreement with The Microband Companies, Incorporated, that lease in recent years has been held by a subsidiary of WorldCom, Inc as lessee

Veritas is the licensee of MMDS Station WNEK-864 in Boston, Massachusetts, operating with facilities at One Financial Center. In 1996 it entered into an MDS channel lease agreement with Atlantic Microsystems, Inc. That lease, too, in recent years has been held by a subsidiary of WorldCom, Inc as lessee

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As the Commission is aware, WorldCom is bankrupt. The above-entitled applications reflect the proposed WorldCom assignment to Nextel Spectrum Acquisition Corp. ("Nextel") of assets, including a number of MMDS spectrum licenses, which Nextel won in an auction in the Bankruptcy proceeding. The Red New York E and Veritas New York and Boston leases mentioned above were not included among those assets. Nextel has advised the respective Petitioners that it has not accepted those leases, and WorldCom has announced its intention to "reject" both of them when it has court permission to do so. Petitioners' bankruptcy counsel has advised that upon the rejection of the leases, Petitioners may have a claim for money but will have no right to enforce any lease provision.

Both leases have provisions which, in the event of default by the lessee, specifically entitle each respective Petitioner to acquire from the lessee any equipment necessary to continue transmission of the respective station's signals, and also whatever right or permission may be necessary to continue to make use of the station's transmission site. Petitioners are prepared pay the lessee in accordance with these terms of the leases in order to retain the ability of their respective stations to operate in accordance with their licenses. With the "rejection" of the Red New York E and Veritas leases, WorldCom will no longer have any obligation to perform in accordance with those leases.

WorldCom could not, in any case, carry out those obligations, because, as the Commission is aware and as the documents associated with the above applications disclose, WorldCom is in the process of assigning to Nextel both the equipment and the site availability rights which are necessary to permit performance of those lease obligations. But Nextel, of course, has decided not to accept the Red New York E and Boston Veritas leases, and it has given Petitioners

no indication that it would take any steps to enable Petitioners to continue to operate from either the New York or the Boston site

This contrasts with the position taken by WorldCom and Nextel with respect to the ITFS licensees whose stations are co-located with those of Petitioners in New York, Boston and elsewhere, in the event Nextel does not accept their leases. WorldCom and Nextel have provided contractual assurance of the continued access of such licensees to both equipment and Transmission Towers or Tower Sites as necessary to permit the continuation of transmissions by those licensees¹

Station WNEK-864 is licensed on Channel H-3 in Boston and operates from a WorldCom site with WorldCom equipment. ITFS stations licensed to the Boston Catholic Television Center, Inc. operate on Channels G-2 and G-4, which are interleaved with Channel H-3. All three stations are located at One Financial Center at exactly the same coordinates and exactly the same height, according to the Commission's records. Those records also show that Station WNT-1314, currently licensed to WorldCom and proposed in the above applications to be acquired by Nextel, operates on Channel H-3 in Tiverton, Rhode Island. It is short-spaced to Veritas' Station WNEK-864, being only 52.6 miles away²

Station WLR-500 is licensed on the four E channels in New York and operates from a WorldCom site with WorldCom equipment. The MMDS station transmitting on the four F channels in New York, which are interleaved with the E channels, transmits from the same location on the Empire State Building as does Station WLR-500, according to the Commission's records. In addition, there are several ITFS E channels in the New York City area which are se-

¹ See amended Section 7.26(b)(11) of the July 8, 2003 Asset Purchase Agreement between the WorldCom and Nextel parties which was filed with the above-entitled applications.

² The Commission's files show that WNEK-864 is located at 42° 21' 08" N, 71° 03' 25" W, while WNT-1314 is located at 41° 35' 48" N, 71° 11' 24" W.

verely short-spaced to WLR-500. Because of the resulting adjacent channel and cochannel interference concerns, it required a number of years of extensive negotiation and litigation before the Commission before construction and operation of WLR-500 at the Empire State Building could be authorized.

Petitioners Are Parties in Interest

As shown above, as matters now stand, upon a grant of the above applications and the closing of the transactions for which the applications seek consent, Petitioners will lose the ability to operate their stations as now authorized by the Commission. As a minimum, each Petitioner will be required to assume the cost, time and trouble of finding a new site for each station, prosecuting an application before the Commission for consent to modify the license of its station, and acquiring new facilities and site lease arrangements to permit the move of the station to a new location.

That is not all. As the Commission is aware, interleaved MMDS stations avoid causing interference to each other by co-locating and matching their radiation patterns exactly so as to avoid adjacent channel interference. Once this co-location is broken, interference is inevitable. As has been made particularly clear in the current 2.5 GHz rule making proceeding, WT Docket No. 03-66, the present interference rules for MMDS and ITFS make new and changed installations virtually impossible in congested areas such as New York and Boston. Consequently, if Petitioners lose the ability to continue to operate their stations from their present sites, they must expect to be unable to return those stations to service until such time as the Commission adopts *new interference and related rules for the 2.5 GHz band*. Consequently, under Section 21.303 of the Commission's Rules, the Petitioners would be faced with loss of the licenses for stations WLR-500 and WNEK-864 unless the Commission were to waive the application of that rule.

The foregoing circumstances fully establish that Petitioners are parties interest under Section 309(d) of the Communications Act, 47 U.S.C. §309(d)

**The Public Interest Would Be Disserved by
The Unconditioned Grant of These Applications**


As shown above, an unconditioned grant of the above applications will permit Nextel to put Petitioners, and presumably a number of other licensees who are similarly situated, off the air for a substantial period of time, and potentially could deprive them of their licenses, and thus their ability to compete with Nextel. Petitioners are readying themselves to compete actively in the provision of low power cellularized communications services as soon as the Commission's Rules are revised to permit the provision of such service. If, as the result of being forced off of their present transmission locations, Petitioners lose their licenses they will, of course, be prevented from engaging in such competition by means of Stations WLR-500 and WNEK-864.

Since Nextel will continue to operate stations co-located with station WLR-500 in New York City and WNEK-864 in Boston, it would be cost-free for them to afford Petitioners the same rights as it granted the ITFS licensees, as described above, which would permit Petitioners to continue in operation pending the transition of the band to low power cellularized operation, Under these circumstances, the public interest would be disserved by the unconditioned grant of the above applications. If the Commission is otherwise inclined to grant them, it should do only on condition requiring Nextel to make possible the continued access of Petitioners, and other

MMDS licensees similarly situated, to both equipment and Transmission Towers or Tower Sites as necessary to permit them to continue to provide service from their now-licensed locations

Respectfully submitted

Veritas LLC
Red New York E Partnership

By 
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Their Counsel

October 24, 2003

Affidavit of Peter A. Frank

Peter A. Frank, being duly sworn, deposes and states the following

I am the Managing Member of Veritas LLC, which is the licensee of MMDS Station WNEK-864 in Boston, Massachusetts and the managing partner of Red New York E Partnership, which is the licensee of MMDS Station WLR500 in New York, N Y

I have read and am familiar with the foregoing Petition to Deny, which is directed to the applications which are pending before the Commission for consent to transfer a number of Commission MMDS and other licenses from WorldCom, Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp. All of the statements of fact in that Petition, except for statements of which the Commission may take official notice, are true to my personal knowledge.



Peter A. Frank

Subscribed and sworn to before me this 29th day of October, 2003



Notary Public

My Commission expires 6/30/08

CERTIFICATE OF SERVICE

I, Marianne C Trana, an employee of Holland & Knight LLP, hereby certify that on October 27, 2003, a copy of the foregoing Petition to Deny was served, via first class mail, to the following

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